IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8193 OF 2006

Smt.Vasundhara R. Chavan.. ....Petitioner.
V/s
Rajdatta A. Rane & Ors.... .... Respondents.

Mr.Surel S. Shah, Adv. For the petitioner.

Mr.S.J.Ghgare, Adv. For respondent No.3.

CORAM: A.P.DESHPANDE, J.
5/7/07

PC:

The present petitioner is original defendant No.1(a) who is mother of original deceased defendant and was brought on record as legal representative of the deceased. The respondent No.1 is the plaintiff, respondent No.2 is minor daughter of deceased original defendant meaning thereby that petitioner is the grand mother of respondent No.2. The plaintiff instituted a suit for perpetual injunction seeking to restrain original defendant from interfering with possession on whose death the present petitioner and respondent No.2 are brought on record as legal representatives. The suit was instituted in the year 1997. The present respondent No.3 Mrs.Sushila Nathu Sanas was not a party to the suit at all. The present petitioner who is defendant No.1(a) took out a notice of motion impleding therein the present respondent No.3 as respondent. The petitioner in the said notice of motion contended that the petitioner has been forcibly dispossessed by respondent No.3-Mrs.Sushila on 31.12.2001. By so contending the present petitioner claimed relief of possession of

premises. The trial Court having found that the respondent No.3-Sushila has not put in appearance and having further noticed that no reply has been filed granted relief as prayed for by the petitioner and allowed the motion. On the basis of the order passed by the Court dated 26.4.05 the petitioner dispossessed respondent No.3-Sushila. With a risk of repetition I go on record to clarify that in a suit instituted by respondent No.1-plaintiff the defendant No.1(a) obtained orders from the trial Court and dispossessed respondent No.3-Sushila who was not even party to the suit. On being dispossessed by the petitioner in execution of order dated 26.4.05, respondent No.3-Sushila took out notice of motion and brought to the notice of the Court below that she has been wrongly dispossessed and also claimed restitution viz. restoration of possession of the premises from which the respondent No.3 came to be evicted. The trial Court has allowed the said motion and directed the present petitioner to restore the possession of the premises where from respondent No.3 was evicted. It is this order passed by City Civil Court which grants restitution to respondent No.3 and directs the plaintiff to put the respondent No.3 in possession of the premises is challenged in the present writ petition. The learned counsel for the petitioner has contended that the impugned order is wholly illegal in as much as the Court below has proceeded to exercise jurisdiction under order XXI rule 99. He submits that the trial Court could not have taken recourse to order XXI Rule 99 for the reason that order XXI deals with execution of a decree. Order XXI Rule 99 provides that where any person other than the judgment debtor is dispossessed of immovable property by holder of a decree in possession of such property or where such property has been sold in execution of decree by the purchaser thereof he may make an application to the Court complaining of such dispossession. Learned counsel submits

that if a person other than judgment debtor is dispossessed from immovable property then alone Order XXI rule 99 can be resorted to. Per contra learned counsel appearing for the respondent No.3 has supported the order passed by the trial Court by contending that if not Order XXI rule 99 principle underlined the said provision can always be applied to the facts of the present case and the order which directs restitution can be supported by section 144 and 151 of Code of Civil Procedure.

2. What is relevant to note is that the respondent No.3 herein has been dispossessed by an order of Court passed on notice of motion in favour of one of the defendants against a person who is not party to the suit. It is obvious that the dispossession of respondent No.3 was wholly without jurisdiction and to say the least unconscionable and aboharant. I have no manner of doubt that the order passed by the City Civil Court dated 26.4.05 allowing the notice of motion taken out by the petitioner directing respondent No.3 to hand over possession was/is wholly illegal and was totally unsustainable. By the impugned order a wrong order has been set aside. Assuming for the sake of argument, as canvassed by learned counsel for the petitioner, that the impugned order may not be justifiable at the touchstone of Order XXI Rule 99 any interference with that order on account of said illegality would go to restore the wrong order by setting aside the right order. This result cannot be obtained in exercise of discretionary writ jurisdiction under Articles 226 & 227 of the Constitution of India. As I am convinced that the impugned order is a right order I decline to interfere with the said order. Writ petition thus deserves to be dismissed. At this stage learned counsel for the petitioner submits that the petitioner be granted liberty to institute fresh suit against respondent N.3 for possession. If the petitioner is in any manner aggrieved by her alleged

dispossession by respondent No.3 in no way right of the petitioner to institute a suit and claim possession is defeated by this order. It is further made clear that in the event if the petitioner files a suit against respondent No. 3 the observations made by the trial Court while disposing of notice of motion taken out by respondent No.3 and directing restitution in her favour will not bind the parties in the suit that the petitioner intends to file. Learned counsel for the petitioner seeks stay of the impugned order for eight weeks. The prayer stands rejected.

5.7.07